

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8053 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

JAGDISHKUMAR K PARGHI

Versus

GUJ STATE ROAD TRANSPORT CORPN

Appearance:

MR NK MAJMUDAR for Petitioner

MR HARDIK C RAWAL for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/08/1999

ORAL JUDGEMENT

1. The petitioner, an employee of the respondent, by this special civil application under Article 227 of the Constitution of India challenges the award annexure 'A' dated 22nd August, 1989 of the Labour Court, Rajkot to the extent where the backwages have been denied to him.
2. Learned counsel for the petitioner contended that once the Labour Court has ordered for reinstatement of

the petitioner, as a consequence thereof, the award should have been passed for payment of full backwages. It has next been contended that the backwages have been denied to the petitioner wholly on erroneous grounds.

3. On the other hand, the counsel for the respondent contended that in fact the backwages have been denied to the petitioner as what the Labour Court has considered that it may be a sufficient substituted penalty for the penalty given to the petitioner of his removal from the services. It has next been contended that the petitioner was chargesheeted for grave misconduct, which was proved in the inquiry and thereafter he was ordered to be removed from the services. The Labour Court accepted as a fact that the petitioner committed grave misconduct but the penalty of his removal from services was considered to be towards the higher side and the reinstatement has been ordered but no other penalty has been substituted. However, the backwages have been denied and it is a case where no interference may be made by this court with that part of the award of the Labour Court.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

5. It is a case where the Labour Court has accepted as a fact that the petitioner has committed misconduct but for this misconduct the penalty of removal from the services given by the Management was taken to be harsh. The petitioner remained unauthorised absent for a long period i.e. for more than one year and the Labour court should not have taken it to be a case of harsh penalty. Remaining of an employee, more so when he is serving in the Corporation which has to provide essential services to the public, unauthorised absent for a long period of more than year, is a very serious matter and the penalty which has been given to the petitioner should not have been interfered with. Be that as it may. Even if it is taken that this penalty has been taken to be harsh by the Labour Court then it has to be substituted by some other penalty, which has not been done in the present case. It is different matter that the respondent felt contended and satisfied with this award of the Labour Court otherwise I have my own reservation in case this award would have been challenged there is all possibility of its setting aside or some penalty might have been substituted for removal from the services. Where the Labour Court has held that the misconduct alleged against the petitioner is proved and which also warrants penalty, then otherwise also, the petitioner would not have been entitled for the backwages. In a case where the misconduct is proved, the

Labour Court is within its jurisdiction otherwise also to substitute the penalty i.e. lesser penalty as well as to withhold the backwages. In this case, the Labour Court has taken very lenient view and has not substituted any other penalty but the backwages has been ordered not to be paid to the petitioner. It is not in fact a substitution of penalty as otherwise also it could have been denied in a case where the misconduct has been proved against the petitioner.

6. So, taking into consideration the matter from any angle, I fail to see any justification in the approach of the petitioner to this court under Article 227 of the Constitution. It is a case where the Labour Court has taken a lenient view and felt contended only by denying the backwages to the petitioner. It is not a case where, as rightly contended by the learned counsel for the respondent, any interference of this court is called for under Article 227 of the Constitution. This writ petition is wholly misconceived before this Court.

7. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

zgs/-